

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

PEARL BEACH, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 05-CV-0350-CVE-FHM
)	
GATESWAY FOUNDATION, INC.,)	
)	
Defendant.)	

OPINION AND ORDER

Now before the Court is Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Dkt. # 15). Plaintiffs' complaint alleges that defendant violated the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, *et seq.* Defendant argues that plaintiffs failed to satisfy the jurisdictional prerequisite of filing with the United States Equal Employment Opportunity Commission ("EEOC") "within 300 days after the alleged unlawful practice occurred" 29 U.S.C. § 626(d). The alleged unlawful practice was defendant's termination of plaintiffs.

Plaintiffs have provided the Court with ample evidence of their timely and diligent pursuit of this matter. The record shows that: plaintiff Pearl Beach was terminated on April 4, 2003 and filed an affidavit alleging discrimination and personal information with the EEOC within 286 days, on January 15, 2004; Barbara Henry was terminated on July 21, 2003 and filed an affidavit alleging discrimination and personal information with the EEOC within 161 days, on December 29, 2003; and Gloria Cheek was terminated on September 12, 2003 and filed an affidavit alleging discrimination and personal information with the EEOC within 48 days, on October 30, 2003. Defendant bases its motion to dismiss on September 29, 2005 letters from

Robert Canino of the EEOC, which state that Mr. Canino could find “no record of charges filed by the above-named charging part[ies] against Gateway Foundation.” Dkt. # 15, Exs. 4, 5, 6. However, Mr. Canino provided subsequent letters explaining that, while plaintiffs’ files “cannot be located,” “there is record in our database that the EEOC investigative file[s] did exist.” Dkt. # 16, Ex. 7.

Further, each plaintiff received her right-to-sue letter on March 2, 2005 and filed suit in state court on May 31, 2005. Dkt. # 16, Ex. 6. Thus, plaintiffs satisfied the procedural requirement of filing within 90 days of receipt of the EEOC notice. Accordingly, the Court finds that plaintiffs have met the jurisdictional prerequisites for asserting claims under the ADEA.

IT IS THEREFORE ORDERED that defendant’s motion to dismiss (Dkt. # 15) is **denied**.

DATED this 5th day of June, 2006.



CLAIRE V. EAGAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT